

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Quay *et al.*

Confirmation No.: 5376

U.S. Patent No.: 7,404,789 B1

Group Art Unit: 1624

Application No.: 10/814,399

Issued: July 29, 2008

Examiner: Ward, Paul V.

Filed: March 31, 2004

For: CYANOCOBALAMIN LOW
VISCOSITY AQUEOUS
FORMULATIONS FOR INTRANASAL
DELIVERY

Attorney Docket No.: 12399-002-999
CAM: 386264-999006

**PETITION FOR REVIVAL OF POTENTIALLY
ABANDONED PATENT APPLICATION UNDER 37 C.F.R. § 1.137(b)**

Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

1. I, the undersigned, am an attorney with Jones Day. Since March 27, 2008, I have prosecuted the above-identified U.S. Application No. 10/814,399 (the “’399 application”), which issued as U.S. Patent No. 7,404,789 B1 on July 29, 2008.

2. The ’399 application was filed on March 31, 2004 by Paul G. Lunn of Natestech Pharmaceutical Company Inc. A Nonpublication Request Under 35 U.S.C. § 122(b)(2)(B)(i) was made at the time the ’399 application was filed.

3. On June 23, 2006, PCT International Application No. PCT/US2006/024685 (the “’685 international application”) was filed by Jeffrey J. King of Black, Lowe & Graham PLLC. The ’685 international application was published on December 27, 2007 under International Publication No. WO 2007/149098 A1.

4. On March 27, 2008, the undersigned submitted papers to the U.S. Patent Office revoking the prior Powers of Attorney and appointing the undersigned and other attorneys at Jones Day to prosecute the ’399 application.

5. The ’685 international application does not claim priority to the ’399 application and has a different disclosure than that of the ’399 application. In other words, the ’685 international application is not a foreign counterpart of the ’399 application. Although there is some overlapping subject matter and claims in both applications, there is

no question that claims secured as part of the '399 application will not be pursued as part of the foreign filing of the '685 international application. As with the differing disclosures of the '399 and '685 applications, the intent of the '399 and '685 applicant was and is to claim distinct inventions despite any inadvertent overlap in the claims.

6. Thus, any delay in providing notice to the U.S. Patent Office of the filing of the '685 international application at that time and until the date of this petition was unintentional. Indeed, applicants do not believe such notice was required, but to the extent the U.S. Patent Office believes it was, the delay was unintentional.

7. Notwithstanding that the '685 international application is directed to a different invention than the '399 application, and that it is not a foreign counterpart of the '399 application, the defendant in litigation pending before the United States District Court for the Southern District of California, known as *QOL Medical, LLC v. Fleming & Company, Pharmaceuticals*, Case No. 09 CV 0001 LAB JMA, has asserted that the '399 application went abandoned in light of the filing of the '685 international application.

8. In light of the above-mentioned litigation, and in an abundance of caution, Applicants petition the U.S. Patent Office to revive the above-identified application under 37 C.F.R. § 1.137(f). The petition should be granted as all the requirements, including the required statement and authorization for the required fee, are set forth herein.

9. Applicants submit concurrently herewith a Notice of Foreign Filing Under 35 U.S.C. § 122(b)(2)(B)(iii) and 37 C.F.R. § 1.213(c) and Rescission of Previous Nonpublication Request to meet the reply requirement of 37 C.F.R. § 1.137(c).

10. In sum, if the U.S. Patent Office determines that the '399 application should have been abandoned for failure to notify the U.S. Patent Office of an international filing pursuant to 37 C.F.R. § 1.137(f), then it is respectfully requested that the '399 application be revived as an unintentionally abandoned application pursuant to 37 C.F.R. § 1.137(b).

11. Authorization is hereby given to charge the fee of \$810.00 pursuant to 37 C.F.R. § 1.17(m) to Deposit Account No. 50-3013. Should any additional fee be required, please charge the required fee to Jones Day Deposit Account No. 50-3013.

As set forth above, the petition should be granted. If additional information is needed, the U.S. Patent Office is respectfully requested to contact the undersigned.

Respectfully submitted,

Anthony M. Insogna, Reg. No. 35,203

By: Michael J. Bruner, Reg. No. 47,458

Date: February 17, 2009

By: Michael J. Bruner (Reg. No. 47,458)

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**NOTICE OF FOREIGN FILING UNDER 35 U.S.C. § 122(b)(2)(B)(iii) AND 37 C.F.R.
§ 1.213(c) AND RESCISSION OF PREVIOUS NONPUBLICATION REQUEST**

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P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 C.F.R. § 1.213(c) and to meet the reply requirement of 37 C.F.R. § 1.137(c), Applicants hereby provide notice to the United States Patent and Trademark Office of the filing of PCT International Application No. PCT/US2006/024685, which was filed on June 23, 2006.

In addition, Applicants hereby rescind the Nonpublication Request Under 35 U.S.C. § 122(b)(2)(B)(i) filed on March 31, 2004 in connection with U.S. Application No. 10/814,399.

Applicants estimate that no fee is due in connection with this Notice. Should any fee be required, please charge the required fee to Jones Day Deposit Account No. 50-3013.

Date: February 17, 2009

Respectfully submitted,

Anthony M. Insogna, Reg. No. 35,203

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